IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 322 of 2002

to

FIRST APPEALNo 414 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE N.G.NANDI
and
Hon'ble MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

KALABHAI GOPALBHAI

Versus

SPECIAL LAND ACQUISITION OFFICER

Appearance:

MR AJ PATEL for Appellants

MR AD OZA, GP for Respondents in FA Nos. 322 to 368/2002

MS MANISHA LAVKUMAR, AGP for Respondents in FA Nos. 369 to 414/2002

CORAM : MR.JUSTICE N.G.NANDI
and
MR.JUSTICE J.R.VORA

Date of decision: 09/05/2002

COMMON C.A.V.JUDGEMENT (Per : MR.JUSTICE J.R.VORA)

1. All these Appeals filed under Section 54 of the Land Acquisition Act, 1894 read with Section 96 of the Code of Civil Procedure, 1908 are directed against the common judgment and award dated 31st March, 2000 rendered by learned Second Jt. District Judge, Kheda at Nadiad, in Land Reference Cases No. 2201/94 (Main) with other 92 allied cases.

2. The chequered history of all these matters reveals that the Executive Engineer of Narmada Project for Main Canal had proposed to the State Government to acquire agricultural lands of village Sanadara, Taluka Thasara, Dist. Kheda for the purpose of construction of Narmada Main Canal. On scrutiny of the said proposal, State Government was satisfied that agricultural lands of village Sanadara were likely to be needed for the said public purpose. Accordingly, different Notifications under section 4(1) of the Land Acquisition Act, 1894 ("the Act" for short) were issued and published on different dates during the month February to June of 1990. Accordingly, the land owners were served with the notices and they had filed their objections against the proposed acquisition. After considering their objections, the Special Land Acquisition Officer had forwarded his report to the State Government as contemplated by Section 5A(2) of the Act. On consideration of the said report, State Government was satisfied that the lands which were specified in the different notifications issued under section 4(1) of the Act were needed for the public purpose of construction of Narmada Main Canal. Accordingly, different declarations under Section 6 of the Act were made and published in the Official Gazette as detailed in para 1 of the impugned judgment. Thereafter, the claimants were served with notices for determination of compensation. The Land Acquisition Officer by different awards awarded compensation to the claimants at the rate of Rs. 300 per Are. The claimants made applications in writing requiring Special Land Acquisition Officer to refer the matters to the Court for redetermination of compensation. Accordingly, references were made to the District Court, Kheda at Nadiad. The Reference Court on appreciation of evidence determined the market value of the acquired lands on the yield basis at the rate of Rs.1600/- per Are, vide judgment and award dated February 20, 1998, as against the claims of claimants for Rs.10,000/per Are.

3. Being aggrieved with the aforesaid judgment/award dated February 20, 1998, by learned Extra Asst. Judge, Kheda at Nadiad, claimants filed First Appeals No. 3558 to 3650/98. The State Government also filed Cross Objections in the above said First Appeals. Those First Appeals had been decided by the Division Bench of this Court (Coram: J.M. Panchal & M.H. Kadri, JJ) vide judgment and order dated 16th February, 1999. After hearing of the parties, this Court set aside the judgment/award and remanded the reference cases for redetermination of market value of the land acquired observing as under :

"6. The learned counsel for the parties have prayed that detailed reasons be not given while passing this judgment which this court proposes to pass, lest the reasons may not affect adversely the interest of the parties concerned. Therefore, we do not propose to pass a detailed order, but would indicate reasons for passing this order in brief. All the parties agree that the conclusions reached by the Reference Court are unsustainable on settled principles of law and determination of compensation on yield basis is contrary to principle of law enunciated by the Supreme Court in Special Land Acquisition Officer, Davangera vs. P. Veerabhadarappa, AIR 1984 SC 174. On going through the impugned award, we find that determination of compensation is not made on legal, valid, reliable, acceptable and relevant evidence. The award is vitiated by error apparent on the face of the record and it is difficult for this Court to embark upon appreciation of evidence and come to a conclusion or record a finding that the market value determined by the Reference Court is just, fair and reasonable. Moreover, the parties have filed three different applications seeking permission of the Court to lead additional evidence at appellate stage. By filing these applications, the claimants as well as the acquiring body propose to rely upon previous awards of reference Courts and judgment of the High Court in respect of similar lands, to enable the Court to determine market value of the acquired lands. Additional evidence also cannot be taken into consideration by the Court unless it is proved that the previous awards of the Court including judgments of the High Court, were rendered in respect of lands similar to the acquired lands. In Civil Application No. 982/99 filed by the

> Acquiring Body for permitting it to lead additional evidence, a prayer is also made to remit the matters to the reference Court to enable the parties to lead evidence and Mr. A.J. Patel, learned counsel for the claimants has stated at the Bar that the matters be remitted to the reference Court with liberty to all the parties to lead evidence afresh. On overall view of the matter, we are satisfied that this is a fit case to remit the matters to the Reference Court for redetermination of compensation after giving opportunity to all the parties to lead evidence in support of their respective cases. ..... The impugned award dated February 20, 1998 rendered by the learned 2nd Extra Assistant Judge, Kheda at Nadiad is hereby set aside. All the appeals are remitted to the Reference Court for redetermination of compensation in accordance with law. The parties will be entitled to lead evidence in support of their respective cases before the Reference Court and after hearing the parties, appropriate award redetermining compensation shall be passed by the Reference Court.....

4. Thus this Court set aside the judgment/award dated 20.2.1998 and remanded the reference cases for retrial and to decide the cases afresh.

5. Thereafter, parties were allowed to lead evidence and after hearing the parties, the learned Second Jt. District Judge, Kheda at Nadiad, vide order dated 31st March, 2000 by common judgment, came to the conclusion that the claimants in all cases are entitled to compensation at the rate of Rs. 1250/- per Are with consequential statutory benefits.

6. Being aggrieved with the impugned judgment dated 31.3.2000 of the Reference Court, the claimants have filed present First Appeals.

7. While remanding the cases in above mentioned First Appeals to the Reference Court, as said above, this Court in the order dated 16.2.1999, as aforesaid, observed that the references were decided on yield method and that was not sustainable method for determination of the market value and hence impugned order dated February 20, 1998 of the learned Second Extra Assistant Judge, Kheda at Nadiad, was set aside with liberty to the parties to adduce evidence afresh.

8. At retrial , the claimants side produced voluminous oral as well as documentary evidence while the State Government chosen not to adduce any evidence. Mainly the evidence which would be required to be discussed in these First Appeals which is produced by the claimants in the shape of oral evidence of Bhagwanbhai Trikamdas, Exh.190, who is one of the claimants, who deposed about the produce of his land and the other lands under acquisition. The next witness who was examined required to be discussed is Ashokbhai Chimanbhai Patel, Exh.200 who is Commission Agent, to whom one of the claimants had sold tobacco, to ascertain what was the price of the tobacco at the relevant time. The third witness examined at Exh.202 is Mr. Motibhai Somabhai Patel, an expert in agriculture who in his deposition, stated that he determined the market value of the land under acquisition on the yield basis and prepared a report which is at Exh.203. Another witness Balusinh Gulabsinh Gohil is at Exh.209, who was Talati-cum-mantri of the Revenue Department at village Lasundara and this witness produced Annewari Patrak at Exh. 210 regarding the produce of village Lasundara. It is pertinent to note that lands of village Lasundara were also acquired for the same purpose and attempt on behalf of the claimants is made that the lands of village Sanadara covered under the present acquisition are more fertile than the land of village Lasundara and, therefore, this witness is examined and Annewari Patrak of village Lasundara is produced and like wise witness Vijaykumar Trikamlal Patel examined at Exh. 211 who was Talati-cum-mantri of village Sanadara at relevant time and he produced Annewari Patrak i.e. Annual Crop Produce of village Sanadara, which is the subject matter of present acquisition. The Annewari Patrak produced by this witness is at Exh.212. In addition to this, State Government has adduced the relevant maps on record. The claimants have also placed copies of revenue record like Village Forms No. 7/12 and other Village Forms on record.

9. Learned Sr. Advocate Mr. A.J. Patel, on behalf of the appellants - claimants, in all these Appeals, contended that the Reference Court fell into error in relying upon the awards of village Vaghroli, situated in Thasra Taluka, wherein the High Court on filing the appeal by the State Government, being First appeal No. 27/86, confirmed the compensation at the rate of Rs. 1150/- per Are. It was also contended that the Reference Court fell into error in relying on the Awards of village Baladha in First Appeal No. 2880/98 of this Court and of village Menpura, in both the cases the compensation was

confirmed by the High Court at the rate of Rs.1150/- per Are. Mr. Patel argued that though the lands acquired of village Baladha, Menpura and Vaghroli, are the lands acquired for the same purpose, vide Notifications under ection 4(1) of the Act in 1990 but in all these three cases this Court in First Appeals passed an award on consensus of the State Government and with the consent of the respective claimants. Mr. Patel cited some cases to advance the principle that awards and judgments rendered by consensus and consent of the parties, cannot be treated as precedent nor the same can be followed as such, as has been done by the Reference Court in the present case. Referring to said Awards of village Menpura, Vaghroli and Baladha, Mr.Patel contended that in all the three cases, this High Court recorded that the award were passed in respective cases by consent of the parties and were not to be treated as precedent. It is urged, therefore, that the Reference Court ought not to have taken into consideration the awards passed by the High Court with the consent of the parties as the same cannot be treated as a precedent.

10. Mr.Patel further urged that claimant Bhagwanbhai Trikmbhai Exh. 190 has deposed about the produce of his land, and in support, revenue entries are also produced. Mr. Patel further argued that vide Exh. 202, Motibhai Somabhai Patel, who is expert in agriculture and has qualification of Doctorate in Agriculture, through the yield of the crops, prepared the report in respect of the valuation of the land which is under acquisition. Valuation report is at Exh. 203 and accordingly on yield method having regard to the market value of the crop, which is being produced on land mostly of tobacco, millet, wheat, etc., the expert witness in his report fixed Rs. 41.20 ps as the market value per square meter of the acquired land. After deducting expenses, Mr. Patel argued further that the claimants are entitled to compensation atleast at the rate of Rs. 29 to 30 per sq. meter in view of the evidence of this expert and the claimant Motibhai Somabhai Patel; that the Reference Court, however, failed to appreciate this evidence produced by the claimants. As against this, no evidence at all was produced by the respondent State Government before the Reference Court. Mr. Patel further argued that almost in the same year, i.e. in 1990 lands of village Lasundara were acquired by the State Government for the same purpose i.e. for the Narmada Canal. It is argued that village Lasundara is situated at a distance of 8 to 10 Kms from village Sanadara which is subject matter of present acquisition. It was urged that for the lands of village Lasundara, this Court in First Appeal

Nos. 4330/98 to 4501/98 vide order and judgment dated 7th May, 1999 (Coram : M.R. Calla & R.P.Dholakia, JJ), awarded Rs. 19/- per sq. meter as against Rs. 100 per sq. meter claimed by the claimants. In fact, these appeals were filed by the State Government against the award of Rs. 19/- per sq. meter by the Reference Court which was confirmed by this High Court vide above said judgment. The SLP filed in the Supreme Court was dismissed and so far as village Lasundara is concerned, Rs.19/- per sq. meter was finalised. Having based his arguments on this fact, Mr. Patel further urged that sufficient evidence was adduced before the Reference Court, which established that the lands of village Sanadara, which is the subject matter of the present acquisition were much more fertile than the lands acquired of village Lasundara, for which the market price was finally determined at the rate of Rs.19/- per sq.meter. Mr. Patel argued that at Exh. 209 Balusinh Gulabsinh Gohil and at Exh. 211 Vijaykumar Trikamlal Patel, Talati-cum-mandri of village Lasundara and Sanadara respectively were examined as witnesses in the Reference Court. They produced Annewari Patraks at Exh. 210 and 212 of village Lasundara and Sanadara respectively. Comparison of Annewari Patraks of both the villages i.e. Sanadara and Lasundara has been placed for the perusal of this court in the paper book and according to Mr. Patel, the land of village Sanadara is more than two times fertile than the land of village Lasundara. It was argued that the Annewari Patraks denote the rich production of crop in a year at village Sanadara. The base year is 1990-91 and, therefore it was urged that while Rs.19/- per sq.meter is determined for the village Lasundara, claimants of village Sanadara are entitled to have the market rate fixed two times more than what had been fixed and determined for Lasundara. It was vehemently urged by Mr. Patel that the village Lasundara might be at the distance of 8 to 10 Kms from village Sanadara. Mr.Patel contended that it is the fertility of the land which is material and not the distance. For this reliance is placed on the decision of this Court in the matter of COLLECTOR OF PANCHMAHALS vs. DESAI KESHAVLAL PANALAL, reported in 1969 (10) GLR 931, wherein this Court has held that when the fertility of the land is similar than the distance of two furlongs or some miles, would not make difference in assessing the market value of the land. Mr. Patel also relied upon the decision of the Apex Court in the matter of The STATE OF MADRAS vs. A.M. NANJAN, reported in AIR 1976 SC 651 in support of his argument that the distance between the lands is not material. It was urged therefore that it is not the distance which is material but the fertility of

land which is required to be taken into consideration. It was urged that the Reference Court did not even touch this issue for the appreciation though there was voluminous evidence on record.

11. Mr. Patel lastly contended that the evidence of expert is the best method to evaluate the market price of the land and for this he relied upon the decision of the Apex Court in the matter of THE SPECIAL LAND ACQUISITION OFFICER vs. SRI SIDDAPPA OMANNA TUMARI, reported in AIR 1995 SC 840, wherein in para 17, the Supreme Court observed that when a report of an expert is got produced by the claimant before the Court giving market value of the acquired lands, the court may, choose to act upon such report if the same is based on authenticity. Mr. Patel also relied upon the decision of the Apex Court in the matter of THAKARSINBHAI DEVJIBHAI VS. EXECUTIVE ENGINEER, GUJARAT, reported in 2001 AIR SCW 2417, wherein the Supreme Court has observed that distance between similarly situated lands and presently acquired lands was not relevant. It was argued that earlier in First Appeals Nos. 3558 to 3650 of 1998, this Court remanded the matter to the Reference Court for deciding afresh and in the last direction this Court permitted the parties to adduce evidence and as such the evidence of expert and the fertility of the land was got produced by the claimants, which was not considered by the Reference Court and on the contrary, the Reference Court merely relied upon the awards of this Court pertaining to village Vaghroli, Baladha and Menpura wherein all these three cases, this High Court specifically observed that none of these cases shall be treated as precedent because award was passed by consent. Ultimately, it was urged that on the evidence on record, the claimants be awarded at least Rs. 29/- to 30/- per sq. meter as compensation for the acquisition of their lands.

14. On the other hand, learned AGP Ms. Manisha Lavkumar on behalf of the State firstly drew our attention to para 6 of the judgment in First Appeal Nos. 3558 to 3650/98 and argued that it is clear from the observation that the Court was pleased to remand the matter because the market value was arrived at by yield method and according to this court, the yield method was not legal and valid method to arrive at the market value. It was urged that this Court relied upon the decision of the Apex Court in the matter of SPECIAL LAND ACQUISITION OFFICER DAVANGERE vs. P. VEERABHADARAPPA, reported in AIR 1984 SC 774, wherein the Supreme Court has disapproved the method of evaluating the market value through yield basis. Learned AGP further contended that

the opinion of the expert is solely based on the yield method to arrive at market price of the land. It was urged that what was disapproved by this Court was again resorted to by the claimants in some other shape and, therefore, in view of the decision of the Apex Court and the observations of this Court while remanding the matters to the Reference Court, the evidence of expert solely based on yield method, suffers from basic infirmity and cannot be relied upon. It was also urged that an attempt on behalf of the claimants to show that the land of village Sanadara is more fertile than the land of Lasundara is also futile because Lasundra is at the distance of 15 Kms from Sanadara and cannot be taken as base for arriving at market price for the lands of village Sandara. It was urged that the lands of village Lasundara cannot be said to be comparable/similarly situated land to the lands of village Sanadara because of the distance of 15 kms in between two villages.

15. Learned AGP drew the attention to the maps produced before the Reference Court and argued that the lands of village Vaghroli, village Baladha, village Menpura, village Salun and village Sandehli are contiguous land within the radius of short distance amongst them. These villages situated around village Sanadara, undoubtedly can be taken to be similarly situated to the land of village Sanadara. It was urged that though in the awards passed for the lands of village Vaghroli, Baladha and Menpura, being consent awards, may not be taken into consideration, but at the same time, the award passed by the Land Acquisition Officer may be taken into consideration, and for this, learned AGP relied upon some decisions. Learned AGP further argued that for the lands of these villages which are contiguous including Sanadara, the Land Acquisition Officer granted Rs. 3 per sq. meter and therefore it is evident that the claimants are not entitled to the more amount than what is granted for the lands of the above villages which are similarly situated. It was argued that though the Reference Court had no advantage to consider the decision in regard to village Salun and Sandheli because when the Reference Court decided the matters by impugned order, the First Appeals in respect of lands of village Salun and Sandheli were pending before this court and now for the lands of village Salun which is only 2 to 3 Kms away from the land under the present acquisition, this Court in First Appeal No. 6009 to 6035/98 vide its order dated 21st of December, 2001 (Coram: B.C. Patel and S.D. Dave, JJ) approved the market price at the rate of Rs. 16 per sq. meter while for the lands of village Sandheli, which is 2 to 3 Kms away from village Sanadara,

which is subject matter of the present acquisition, this Court in First Appeals No. 1432/99 to 1493/99, approved the market price for the lands of village Sandheli at the rate of Rs. 18 per sq. meter. It was therefore urged that Lasundara not being the comparable instance, the rests are being nearer and similarly situated lands, if any upward revision of market price is considered proper, then, the upward revision cannot be more than Rs.16/- per sq. meter.

16. All these First Appeals came up for admission hearing on 22.2.2002 before the Division Bench (Coram: B.J. Shethna & N.G. Nandi, JJ) and the Appeals were admitted.

17. Having regard to the contentions raised on both the sides, the question which is posed before this Court is whethr the market price fixed by the Reference Court at Rs. 12.50 per sq. meter is just and reasonable and if any upward revision is required, then to what extent? In view of the contentions raised and the voluminous evidence produced on behalf of the appellants, this is an exceptional case wherein the principles of determining the market price in Land Reference Cases is required to be restated.

18. Heavy burden of proof is cast upon the claimants to prove by cogent and adequate evidence that the amount awarded by the Land Acquisition Officer is not adequate and reasonable. This burden is undoubtedly, to adduce relevant and material evidence to establish that the acquired lands are capable of fetching higher market value than the amount awarded by the Land Acquisition Officer/reference court. Needless it is to say that the object of inquiry in a Reference under section 18 of the Act is to bring on record the price which the land under acquisition was capable of fetching in the open market as on the date of the Notification under Section 4(1) of the Act. It is necessary to assess always the relative situation of the acquired land, the nature of the land, its suitability and even the use of the land on the date of the Notification under section 4(1) of the Act. The special distinctive feature if the land possessed, is also the relevant factor, to be taken into consideration in determining the market value. There cannot be two views that all these are the questions of fact. Therefore, the paramount duty of the courts of fact is to place the evidence to very close scrutiny, objectively assess the evidence tendered by the parties on proper consideration thereof in correct perspective to arrive at adequate and reasonable market value. The attending fact

and circumstances in each case which would furnish guidance to arrive at the market value of the acquired lands. It is equally necessary to consider the neighborhood lands which are possessed of similar potentiality or any advantageous features or special circumstances in each case. The Court is required to take into account all the relevant considerations. The Court is required to keep at the back of its mind that the object of assessment is to arrive at reasonable and adequate market value of the lands. In that process, there may be some guess work involved, but fits of imagination must be eschewed and mechanical assessment of evidence should be avoided. Even in the absence of oral evidence adduced by the Land Acquisition Officer or the claimants, the courts are to draw from their experience the normal human conduct of the parties and bona fide and genuine self transaction may be guiding star in evaluating the evidence. Undoubtedly, the awards passed for the contiguous lands similarly situated provides better safe guide to the courts. Misplaced sympathies or undue emphasize solely on the claimants right to compensation would place very heavy burden on the public exchequer which citizen contributes by direct or indirect taxes.

19. Fair, reasonable and adequate market value is always a question of fact depending upon the evidence adduced, circumstances and probabilities arising out of individual cases. The cyno sure or the acid test recognised by the courts of law since years in this country is whether a hypothetical willing vendor would offer the lands and willing purchaser in normal human conduct would be willing to buy as a prudent man in a normal market conditions prevailing in the open market in the locality in which the acquired lands are situated as on the date of Notification under Section 4(1) of the Act. Undoubtedly, this principle evolved excludes anxiety of an anxious buyer dealing at arms length with throwaway price. Likewise fictitious sales to inflate market value must be excluded. The Judge should sit in arm chair of the said willing buyer and he can answer to the question whether in the given set of circumstances as a prudent buyer, he would be willing to offer the same market value when the court proposed to fix for acquired lands in the available market conditions. The Court is, therefore, enjoined with the bounden duty of the public function and judicial dispensation and determination of the market value of the acquired lands and compulsory acquisition.

20. This settled legal position was necessary to be

considered because the claimants have claimed inflated rate of market price adducing the evidence of expert and on the premise that the land of village Sanadara is much more fertile. As said earlier, a close scrutiny of the evidence adduced including the evidence of the expert is required because the main thrust of the argument on behalf of the appellants rests on the expert evidence. We shall now, being the first appellate court, closely scrutinise the evidence including the evidence of the expert adduced by the claimants having regard to the facts of the case and the law applicable.

21. Appreciating the oral as well as documentary evidence, first we shall consider the evidence of one of the claimants Bhagwanbhai Trikambhai at Exh.190 and witness Ashokbhai Chimanbhai Patel at Exh. 200 along with this, the bill of sale of tobacco produced by witness Ashokbhai Chimanbhai Patel at Exh. 201. The claimant Bhagwanbhai Trikambhai stated in his evidence that in the year 1990 he sold tobacco at the rate of Rs. 401 per mound. He was growing 60% tobacco in his land and in the remaining 40% he was growing crops of wheat, millet, bajera, etc. According to this witness, in that particular year 1990, he had crop of 60 to 65 mound of tobacco, 100 mound of millet and the price was Rs. 90/to 95/- per mound, in that particular year, he had 80 to 90 mound of wheat and the price was Rs. 80/- to 85/- per mound. Their land was irrigated land. The water was flowing through the tank of Mangroli and the land was also irrigated through the wells situated. While the other witness Ashokbhai Chimanbhai Patel who was an commission agent and alleged to have purchased tobacco from witness Bagwanbhai Trikambhai, examined at Exh.200, deposed that he purchased total 1116 mound and 6 kgs of tobacco from Bhagwanbhai at the rate of Rs.401/- for tobacco for which he has produced a bill at Exh. 201. Appreciating the evidence of these two witnesses though Village Forms No. 7/12 and other necessary revenue records have been produced by the claimants, it is clear that the claimants have resorted to yield method again, which was disapproved by this High Court vide order dated 16.2.1999 in First Appeals relying upon the decision of Apex Court, as said above. This evidence would be useful only if the court is inclined to adopt the method of yield. The yield method as per the established law can only be resorted to for determination of the market value when no other evidence is available. We are not inclined to arrive at the market value basing on yield method because the other necessary reliable evidence on record as discussed hereinabove is available to arrive at the market price and hence the evidence of both these

witnesses Bhagwanbhai Trikambhai Exh.190 and Ashokbhai Chimanbhai at Exh. 200 will not be useful to the claimants. Though it is pertinent to note that it is admitted by witness Bhagwanbhai in para 8 of his deposition that the boundaries of village Lasundara and Sanadara are hardly at a distance of 3 to 4 kms and in between two villages named as Sandheli and Salun are situated. It may be pertinent to note here again that the lands of village Salun and Sandheli had been acquired, for which the market price has been fixed and has become final between the parties through the awards of this Court. It may also be pertinent to note that there is not even slightest indication in the deposition of the claimants that the lands of Sandheli and Salun are not similarly situated to the lands of village Sanadara, which is the subject matter of present acquisition. It is also pertinent to note here that villages Salun and Sandheli both are at the distance of hardly 2 to 3 Kms from village Sanadara. Suffice it to say that the evidence of claimants or witness Ashokbhai Chimanbhai at Exh. 200 is absolutely not useful to the claimants and to this court for arriving at the market value.

22. The star witness on whom the main thrust is put by claimants is examined at Exh. 202, Motibhai Somabhai Patel. He has stated that his qualification is M.Sc. and had obtained the Degree of Doctorate in Agriculture, Chemistry and Social Science. He was serving in Agricultural University. He has deposed that he has seen the land of village Sanadara, which is under present acquisition; that he evaluated the land for its market value. He took Survey No. 306 of village Sanadara for deciding the market value. He has categorically stated that he had opted the produce of crop method i.e. yield method to arrive at the market value for the land of village Sanadara. He has submitted his report at Exh. 203.

23. At the outset, in his report, he has mentioned that the land can be valued by two methods, one of which is on the basis of sales of round about lands and the other is by valuation of lands by income capitalisation method. So far as the first method is concerned, in his report he gave his opinion as under :

"(1) On the basis of the Sales of of round about lands.

In a manual of land acquisition for the State of Government by Endorson I.C.S. Commissioner of Settlement and Director of Land records. It has

been stated on page 1990. There are special circumstances which some times vitiate the prices recorded in sales deeds. These prices are not the actual price paid. Instances have been known in which lower prices have been recorded in order to save stamp duties etc. Some times it happen in the village sales deed be executed after 10 to 15 years few sales of land take place. Only distress sales are recorded. In view of these facts, I am valuing this land by income capitalization methods."

So the expert excluded the method which is approved by the courts in this country since years and the expert resorted to the method which is disapproved by the courts of this country including the Apex Court or the method to be resorted to only when any other mode of deciding market value is not available. Though he has arrived at the conclusion that by capitalization of yield method, the land can be valued at Rs.41.21ps per sq. meter. in our view, the opinion of the expert is vitiated for the simple reason that the expert resorted to yield method which is disapproved by the courts. True it is that it is not a principle of law that the yield method should be totally discarded in deciding the market value but the principle is, when other evidence is available, the yield method must not be resorted to. In this case, the awards of the nearby villages are available, as discussed hereinafter to determine the market value and, therefore the method adopted by the expert witness to arrive at the market value of the land cannot at all be considered. This is the basic infirmity which the expert evidence suffers. Earlier, when the matters were remanded by this Court, the claimants without examining the expert, resorted to the evidence of yield and after remanding the matters, the expert resorted to same method, which was disapproved by this Court in earlier First Appeals. This is the first reason that we are not inclined to accept the report of the expert and act upon it. The Apex Court in the matter of SPECIAL LAND ACQUISITION OFFICER, DAVANGERE vs. P. VEERABHADARAPPA, reported in 1984 SC 774, stated that when other evidence is available, the yield method should not be adopted. In paras 20 the Apex Court observed as under :

20. In regard to investment in agricultural lands, there are many imponderables inasmuch as the investor runs as much greater risk than the risk that he run in investment in housing which consists in vagaries of weather and other uncertainties. There is no security of

> principal, no liquidity of investment nor any certainty of income. The appreciation of principal or income is also uncertain. The reasons for these is that agricultural lands are not readily transferrable under the various land reform legislations e.g. laws relating to ceiling on agricultural holdings under the existing State laws and tenancy laws which place restrictions on transfer of such lands with concomitant danger of effacement of the rights of the absentee-landlord and the creation of rights in the tillers of the soil. In evaluating the rate of return which would voluntarily satisfy an investor in such a property, the risk factor has further to be evaluated. There may be total or partial failure of crops either through failure of rain or drought or inadequate or excessive rainfall. There may be a failure of crops on account of locust invasion or insects or pests. The cast inputs as seeds, water, fertilizer, labour charges etc. would vary from year to year. If the overall cost goes up, the income from agricultural produce would be comparatively less. The fluctuations in price of agricultural produce introduce a great deal of uncertainty in regard to the income that can be expected from the sale of the produce. If the yield of the crop in other producing countries is large, or the market prices prevailing in such countries are low, the prices of such agricultural produce in India would go down. In view of these considerations, an investor would expect a much higher rate of return so that the risk factor is properly discounted.'

24. In view of the principle enunciated in the case of Special Land Acquisition Officer, Davangere vs. Veerabhadarappa (supra), we are not inclined to accept the market value arrived at resorting to yield method by the expert witness Motibhai Somabhai Patel. Mr. Patel heavily relied upon the decision of the Apex Court in the matter of THE SPECIAL LAND ACQUISITION OFFICER vs. SRI SIDDAPPA OMANNA TUMARI, reported in AIR 1995 SC 840 wherein the Apex Court has observed that when a report of an expert is got produced by a claimant before the Court giving market value of the acquired lands, the Court may choose to act upon such report for determination of the market value. It is pertinent to note that the report with which the Apex Court was dealing, was the report of an expert not based on yield basis but the same was the report of an expert based on sale instance. It is useful

to quote paras 15 and 16 of the above said decision of the Apex Court, which read as under :

" 15. It has become a matter of common occurrence with the claimants who seek enhanced compensation for their acquired lands from court to produce the report of valuation of their lands in court purported to have been prepared by the experts. No doubt, courts can act on such expert evidence determining the market value of the acquired lands, but the court having regard to the fact that experts will have prepared the valuation reports in the court and will depose in support of such reports, at the instance of the claimants, must with care and caution examine such reports and evidence given in support thereof. Whenever valuation report made by an expert is produced in court, the opinion on the value of the acquired land given by such expert can be of no assistance in determining the market value of such land, unless such opinion is formed on relevant factual data or material, which is also produced before the court and proved to be genuine and reliable, as any other evidence. Besides, if the method of valuation of acquired land adopted by the expert in his report is found to be not in consonance with the recognised methods of valuation of similar lands, then also, the opinion expressed in his report and his evidence can be of no real assistance to the court in determining the market value of the acquired land. Since the exercise which will have been done by the expert in arriving at the market value of the land in his report on the basis of factual data bearing on such valuation, will be similar to that to be undertaken by the court. In determining the market value of the acquired land, it can no doubt receive assistance from such report, if it is rightly done and the data on which the report is based is placed before the court and its authenticity is established.

16. Therefore, when the valuation report of an acquired land is made by an expert on the basis of prices fetched or to be fetched by sale deeds or agreements to sell relating to the very acquired lands or the lands in the vicinity need arises for the court to examine and be satisfied about the authenticity of such documents and the truth of their contents and the normal

circumstances in which they had come into existence and further the correct method adopted in preparation of that report, before acting on such report for determining the market value of the acquired land. The opinion expressed in the report that the author of the report has made the valuation of the acquired lands on the basis of his past experience of valuation of such lands should never weigh with the court in the matter of determination of market value of the acquired lands, for such assertions by themselves cannot be substituted for evidence on which it ought to be based and the method or valuation adoptable in such report.

25. The opinion of expert cannot be of any assistance in determining the market value unless such opinion is formed on relevant factual data or material. The report of an expert further must be in consonance with the recognised methods of valuation on similar lines. The opinion of expert in this case is lacking in these two aspects. Firstly, the base which the expert took was Survey No. 306 which was not an acquired land and secondly the method which the expert adopted is totally against the established principle of law when other evidence is available, yield method for determination of the market value cannot be adopted, it may be by an expert or by the claimants. In this particular case, needless it is to observe that there was other evidence and the reference court adopted the yield method to arrive at the market price. This court was constrained to remand the matters to the Reference Court for fresh determination. Again, in retrial, the expert resorted to same method, which cannot be approved, resulting in failure on the part of the claimants to establish and discharge the burden of proving that the market value of the land as decided by the Land Acquisition Officer is inadequate and that what should be the market value of the land acquired. For these reasons, the evidence of expert Motibhai Somabhai Patel so far as it relates to the determination of market value through yield method is not useful to the claimants and cannot be relied upon by this Court.

26. An attempt has been made by the claimants to establish that lands of village Sanadara is two times more fertile than the land of village Lasundara, for which, as aforesaid, Rs. 19/- per sq. meter, has become final by the awards of this Court for the lands acquired of village Lasundara. The claimants again rely upon the evidence of expert Motibhai Somabhai Patel and the

evidence of two talaties of village Lasundara and Sanadara and two Annewari patraks at Exh. 210 and 211. We shall first examine the evidence in this regard as has been referred to by the expert witness Motibhai Somabhai Patel. The expert has stated in his deposition that he has seen village Lasundara but the land of village Lasundara is much inferior to the land of village Sanadara which is more fertile. The expert stated that the lands of village Lasundara is salty while the lands of village Sanadara is deep and fertile. This statement of the expert cannot be accepted for the simple reason that the comparative soil test had never been undertaken by the expert witness to arrive at such a conclusion. Not only that but what is narrated in the deposition has not been mentioned in his report at Exh. 203. A laboratory test is a must, when an expert is basing his opinion on comparison of fertility of two lands which is easily available in this modern age. Meaning thereby that the opinion of the expert regarding comparison of both the lands of village Lasundara and Sanadara is without any scientific base and scientific test i.e. laboratory test which could have easily been undertaken by the witness. Not only that but in the last line of his deposition, however in contradiction, this witness stated that the lands of village Sanadara is more fertile than the land of village Lasundara. Now, this being the factual position, evidence of expert fails to establish that the land of Sanadara is more fertile than the land of village Lasundara.

27. The other evidence which was resorted to by the claimants to establish that the land of Sanadara was more fertile than the land of village Lasundara is the Annewari patraks of both the villages, for which Talati of both the villages are examined at Exh.209 and Exh.211. Annewari Patrak of village Lasundara is produced at Exh. 210 and Annewari Patrak of village Sanadara is placed at Exh. 212. On behalf of the claimants Mr. Patel after placing comparative table of these Annewari Patraks, contended that this is the revenue record which denotes that the produce of village Sanadara is 2 1/2 times more than the produce of village Lasundara for which this Court granted Rs.19/- per sq. meter, which is the market value.

28. Irrespective of the fact whether the land of Lasundra is comparable instance in the facts and circumstances of this case or not, we shall examine the contention raised on behalf of the appellants and scrutinise the evidence of Annewari Patraks because both the Talaties only produced the Annewari Patrak and they

have not stated more than what was required for producing the Annewari Patraks at Exh. 210 and 212. First we shall have to ascertain whether the Annewari Patraks got produced through the talaties are acceptable evidence or not. We are constrained to observe that neither the appellants nor the respondents threw any light as to what was the nature of Annewari Patraks and how the same were required to be considered. If the Annewari Patraks are maintained in pursuance to some statute, then presumption may arise that the official act was done properly and that the Annewari Patraks may or may not be acceptable evidence, as the case may be. None of the parties pointed out that these Annewari Patraks were prepared/maintained in pursuance of any statutory provisions and what care or what procedure was required to be followed for preparing the Annewari Patrak. In these circumstances, Annewari Patraks cannot at all be said to be an acceptable evidence without the proof of the care envisaged by a statute was taken by the concerned authorities and that Annewari Patraks were prepared in pursuance of statutory mandates. On the contrary Bombay Land Revenue Code states that the Annewari Patraks are prepared on administrative instructions. The form of Annewvari Patrak by actual yield test is given in Appendix `O-Q-1' of the Gujarat Land Revenue Rules, 1972, which is as under :

APPENDIX 0-Q-1

[A.O. XXX-A]

Form of Annewari by-Actual Yield Test.

Village :- Maximum rate of assessment in the survey group.

S.No:- Name of Crop

Taluka assessment Standard of cultivation :

Date of Test

Name of person present	Eye estimate of the yield per Guntha in standard seers by weight	Date of threshing	Yield actually obtained by by threshing the crop over one guntha
1	2	3	4
1			
2			
3			
4			

5
6
7

Yields for the last ten years (or as many years as may be available in the same village or another village in the same tract).

Year	Village	Standard seers by weight	Soil classification of the land

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Formula

(1) Standard soil x 12 / (2) Soil annas of the field = (3) Actual yield / (4) Standard Yield = Annewari

(If this annewari is considered too low or too high in comparison with the general eye estimates for the village, give reasons, e.g. accumulation of silt by bunding, denudation of soil, heavy manuring, bad cultivation and so on.)

This form clearly indicates that Annewary Patraks are prepared as per the Administrative Orders No. XXX-A. In that circumstance it is necessary that the formula which is attached below the form is required to be proved by the person who intends to rely upon Annewari patrak. Unless this is done, Annewari Patrak is not an evidence at all and, therefore, the Annewari Patrak which is got produced for the fertility of the land must be excluded from consideration.

29. Thus, the evidence produced by the claimants on appreciation is not useful at all for determination of market value of the land acquired. Now this takes us to the ascertainment of the market value of the acquired lands.

30. In this regard, it is useful to refer to the observation of the Apex court in the matter of LAND ACQUISITION OFFICER vs. JASTI ROHINI (SMT) AND ANOTHER, reported in (1995) 1 SCC 717.

" It is settled law that the market value should be determined on the hypothesis of the price fetched in the bona fide sale by a willing vendor who would agree to sell the lands to a willing vendee of the acquired land or the land in the neighborhood possessed of similar features. The notification under Section 47-A which is meant to be a guide for collection of revenue cannot form the basis for determination of market value of the land under Section 23(1) of the Act. The question of fixation of market value is a paradox which lies at the heart of the law of compulsory purchase of land. The paradox lies in the facts that the market value concept is purely a phenomenon evolved by the courts to fix the price of land arrived between the hypothetical willing buyer and willing seller bargaining as prudent persons without a medium (sic modicum) of constraints or without any extraordinary circumstances. But the condition of free market is the very opposite of the condition of the compulsory purchase which is ex hypothesi, a situation of constraints. Therefore, to say, that for compulsory purchase, compensation is to be assessed and market value is to be determined in that state of affairs has to be visualised in terms by its direct opposite. To solve the riddle, courts have consistently evolved the principle that the present value as on the date of the compulsory acquisition comprised of all utility reached in a competitive field as on the date of the notification and the price on which a prudent and willing vendor and a similar purchaser would agree. The value of the land shall be taken to be the amount that the land if sold in the open market by a willing seller might be expected to realise from a willing purchaser. A willing seller is a person who is a free agent to offer his land for sale with all its existing advantages and potentialities as on the date of the sale and willing purchaser taking all factors into cosnideration would offer to purchase the land as on the date of the sale. Future suitability or adaptability of the land for any purpose shall not be taken into account. The compensation must, therefore, be determined by reference to the price which a willing vendor might reasonably expect to obtain from a willing purchaser as on the date of the notification of the seller to part with his land and the urgent necessity of the vendee to purchase the land

must, alike, be disregarded and neither of them must be considered as acting under compulsion."

30. Now for the least even, we are inclined to deviate from the principle established that the consent award or consent judgment are not to be treated as a precedent. It is further made clear that the awards passed by this Court in respect of the lands of village Vaghroli, Baladha and Menpura cannot be treated as a precedent for determination of the market value as has been done by the Reference Court nor we are inclined to consider those awards for the determination of the market value in this case also. Our attention is drawn to the map produced by the State Government. Map reveals that the Main Narmada Canal for the purpose of which the present lands as well as the lands of other villages were acquired passes from east to west, the canal enters into Thasra taluka, District Kheda from eastern direction, covers the lands of villages Vaghroli, Baladha, Menpura, Salun, Sandheli, Sanadara, and then it proceeds to Kapadwanj Taluka towards west and includes the lands of village Lasundara. Village Vaghroli is at a distance of 2.5 kms, the lands of village Baladha is at a distance of 5 kms, village Menpura is at a distance of 11.5 kms, village Salun is at a distance of 7 kms, village Sandheli is at a distance of 6kms and lands of village Lasundara is at a distance of 12 kms from the acquired lands of village Sanadara. In fact, between the lands of village Sanadara and Lasundara, the lands of village Salun and Sandheli are situated at a distance mentioned as above on the western side of village Sanadara. While the lands of other three villages, namely, Vaghroli, Baladha, Menpura are situated on the eastern side of village Sanadara. Undoubtedly all the lands of these villages are contiguous lands and in absence of the reliable evidence as to the fertility and the special feature of particular land, the land of one village can form the basis for the determination of the market value of the other village. As said above, the claimants have failed to prove that the lands of Sanadara is more fertile than the other land of village Lasundara or the other villages as mentioned above. Out of which the award in respect of the lands of village Vaghroli, Baladha and Menpura have become final and this Court awarded Rs. 1,150/- per Are for the lands of these three villages. In each of the awards, the court specifically mentioned that the award passed for the lands of village Vaghroli, Baladha and Menpura shall not be treated as a precedent because the same was passed on agreed consensus and consents of the claimants, as said above, we do not at all intend to deviate from the principle enunciated by the Apex Court that the consent award cannot form the basis to determine market rate of

subsequent acquisition. At the same time, a court of fact cannot be oblivious to the aspect that in land reference cases, the courts shall take the value of the land to be the amount at which the land is sold in open market by a willing seller that might be expected to be realised from a willing purchaser as observed by the Apex court in the case of Land Acquisition Officer vs. Jasti Rohini (supra). A willing seller is a person who is a free agent to offer his land for sale with all its existing advantages and potentialities as on the date of the sale and willing purchaser taking all factors into consideration would offer to purchase the land as on the date of the sale. The Apex Court therefore mandated in the above decision that the compensation must be referred to the price which a willing vendor might reasonably expect to obtain from a willing purchaser as on the date of the notification published under Section 4(1) of the Land Acquisition Act. The Apex Court goes further and observed that court must sit in arm chair of the purchaser. Now while not deviating from the principle that the consent award shall not be the precedent, the willing purchaser can not be oblivious to the fact that for the nearby land similarly situated, the land owners agreed to the price at Rs. 1,150/- per Are. We do not therefore take those awards as a precedent but we also take a note of the fact that while assessing the market price, a willing purchaser will be bearing in mind that the agriculturists of nearby villages similarly situated consented the rate at Rs. 1,150/- per Are. While assessing the market value the mental process of a willing purchaser cannot be discarded as mandated by the Apex Court and to that extent only sitting in Arm chair of the willing purchaser, we may take note of this fact without following those awards for determination of the market value in terms of particular consensus and consent, the agreement between the parties to accept and to agree to certain price for selling the land. In the case of The Special Land Acquisition Officer vs. Sri Siddappa Omanna Tumari (supra), the Supreme Court was dealing with the case wherein out of 300 acres of land acquired, land owners of 240 acres of land settled the market price at the rate of Rs. 4,000/per acre. The Supreme Court adopted the same market value for the remaining 60 acres of land on the basis of the agreement arrived at upon the land owners of 240 acres of land on the ground that the 60 acres of land which was in question was almost similar to 240 acres of land, for which the land owners settled the market price by an agreement.

31. Now coming to the determination of market value,

the awards of land in respect of Vaghroli, Baladha and Menpura cannot be taken into consideration for deciding the market price of the land of village Sanadara, then, the award passed in respect of Lasundara is also not comparable instance to decide the market value of the land of Sanadara. This is so because of two reasons. Firstly, between village Sanadara and Lasundara, the lands of two villages i.e. Salun and Sandheli are situated and lands of these villages were acquired for the same purpose. The second reason is even in the award passed by this Court in respect of lands of Salun and Sandheli, the court observed that the land acquired of these villages is contiguous one. Therefore, in our view, for deciding just and reasonable compensation, the award passed by this Court in respect of villages Salun and Sandheli can be the best safe guide. The Reference court had no advantage to assess the market value basing the awards passed by this Court in respect of the land of these two villages because this court passed the awards in respect of these two villages after the decision rendered by the Reference court, which is impugned in these appeals. Village Lasundara is 12 kms away from village Sanadara while village Salum is at a distance of 7 kms away and Sandeli is at a distance of 6 kms away from village Sanadara. The lands of these two villages, namely, Salun and Sandheli intervenes between the lands of village Sanadara and Lasundara and, therefore, the awards passed in respect of villages Salun and Sandheli which is within the nearby proximity must be the best safe guide for the determination of the market value for the lands of village Sanadara. There is no evidence on behalf of the claimants nor any contention is raised that the lands of village Sanadara is not similarly situated with the lands of village Salun and Sandheli which were acquired and, therefore, it may be concluded that the lands of village Salun and Sandheli which were acquired, for which the awards are passed by this Court are similarly situated with the lands of village Sanadara. In First Appeals No. 6009 to 6035 of 1998 in respect of village Salun, Taluka Thasra, for the lands acquired for the same purpose i.e. Narmda Project Main Canal, this Court (Coram: B.C. Patel and S.D. Dave, JJ) on 21.12.2001, confirmed the market value of those lands at Rs. 16 per sq.meter i.e. Rs. 1,600/- per Are while in First Appeals No. 1432 to 1493/99 in respect of the lands of village Sandheli, wherein Notification under Section 4 of the Act was published in 1989, 1990 and 1991, this Court confirmed the market rate for the lands of village Sandheli at the rate of Rs. 1,800/- per Are i.e. Rs. 18 per Sq. meter. In the case of village Salun also Notification under Section 4 was published in

the month of May and July, 1990, which is the same year in which the Notification under Section 4 was published in the present case also. Now, it appears that considering this aspect of the matter and having taken into consideration these two awards in respect of lands of village Salun and Sandheli, taking these awards to be safe guide, the market value for the present case must be determined at the rate of Rs. 1,800/- per Are i.e. Rs. 18/- per Sq. meter and for the above said reasons, on reappeciation of the evidence and after taking the overall view of the matter we redetermine the market value in the present case at Rs. 1,800/- per Are i.e. Rs. 18/- per sq. meter. To that extent, the interference with the impugned judgment and award of the Reference Court is required.

32. The Reference Court has awarded Rs. 1,250/- per Are i.e. Rs.12.50 per Sq. meter, we award Rs. 1,800/per Are i.e. Rs. 18/- per sq. meter. Meaning thereby that we grant additional compensation of Rs. 550/- per Are i.e. Rs. 5.50 per sq. meter than the compensation awarded by the Reference Court. The Appeals of the appellants to this extent are required to be allowed. The appellants shall be entitled to all statutory benefits as directed by the Reference Court and further the appellants are also entitled to interest at statutory rate on the amount awarded as solatium in view of the judgment in the case of SUNDER vs. UNION OF INDIA, reported in (2001) 7 SCC 211 wherein it is held that the person entitled to the compensation awarded is also entitled to get interest on the aggregate amount including solatium.

33. In the result, all these Appeals are partly allowed to the extent that the appellants - claimants are entitled to the additional compensation of Rs.550/- per Are i.e. Rs. 5.50 per sq. meter in addition to what has been awarded by the Reference Court, i.e. in all Rs. 1,800/- per Are i.e. Rs. 18/- per sq. meter. We also direct that the claimants are entitled to interest on the amount of solatium. No order as to costs.

(N.G. Nandi, J.)

(J.R. Vora, J.)

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